

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SPINE & JOINT SURGICAL INSTITUTE
OF MICHIGAN SOUTHFIELD LLC,

Plaintiff,

Case No. 21-cv-11316
Hon. Matthew F. Leitman

v.

SURGICAL CENTER
OF SOUTHFIELD, LLC, *et al.*,

Defendants.

**ORDER GRANTING PLAINTIFF LEAVE
TO FILE A FIRST AMENDED COMPLAINT**

On June 3, 2021, Plaintiff Spine & Joint Surgical Institute of Michigan Southfield LLC (“S&J”) filed this action against several Defendants. (*See* Compl., ECF No. 1.) S&J alleges, among other things, that Defendants breached the parties’ contract and committed fraud. (*See id.*)

On August 25, 2021, Defendants filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). (*See* Mot. to Dismiss, ECF No. 16.) One of Defendants’ primary bases for dismissal is that S&J has failed to plead sufficient facts to state viable claims under the Supreme Court’s decisions in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662,

678 (2009) and failed to plead specific facts to support claims of fraud under Federal Rule of Civil Procedure 9(b). (*See id.*, PageID.151-156, 159-165.)

After the motion was fully briefed, it was transferred to the undersigned from another Judge of this Court. (*See* Order of Disqualification, ECF No. 27.) The Court then set a hearing on the motion to dismiss for March 15, 2022. (*See* Notice of Hearing, ECF No. 28.)

Without expressing any view regarding the merits of the motion to dismiss, the Court will grant S&J the opportunity to file a First Amended Complaint in order to remedy the alleged deficiencies in its claims identified by the Defendants in the motion to dismiss. The Court does not anticipate allowing S&J another opportunity to amend to add factual allegations that it could now include in its First Amended Complaint. Simply put, this is S&J's opportunity to allege any and all additional facts, currently known to it, that may cure the alleged deficiencies in its claims.

By **February 15, 2022**, S&J shall file a notice on the docket in this action notifying the Court and the Defendants whether it will amend the Complaint. If S&J provides notice that it will be filing a First Amended Complaint, it shall file that amended pleading by no later than **March 1, 2022**. If S&J files a First Amended Complaint, the Court will terminate without prejudice Defendants' currently-pending motion to dismiss as moot and will cancel the scheduled hearing on that motion.

If S&J provides notice that it will not be filing a First Amended Complaint, the Court will proceed with the hearing on March 15, 2022, as scheduled.

IT IS SO ORDERED.

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: February 8, 2022

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on February 8, 2022, by electronic means and/or ordinary mail.

s/Holly A. Ryan
Case Manager
(313) 234-5126